



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0121]

RIN 1625-AA09

Drawbridge Operation Regulation; Great Egg Harbor Bay, (Ship Channel and (Beach Thorofare NJICW)), Somers Point and Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the operating schedules that govern the opening of the S52 (Ship Channel) Bridge, mile 0.5, across Great Egg Harbor Bay at Somers Point, NJ and the Route 52 (Ninth Street) Bridge, mile 80.4, across Great Egg Harbor Bay Beach Thorofare NJICW at Ocean City, NJ. The existing regulations contain drawbridge operation schedules for the Route 52 Bridges. However, the existing bridges were modified in 2012 from movable bridges to fixed bridges. Since the bridges are no longer movable bridges, the regulations controlling the opening and closing of the bridges are no longer necessary.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0121. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the in "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 pm the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jim Rousseau, Bridge Management Specialist, Coast Guard, telephone 757-398-6557, e-mail James.L.Rousseau2@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>

NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code
NJICW New Jersey Intracoastal Waterway

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Route 52 bridges that once required draw operations as outlined in 33 CFR 117.753 and 33 CFR 117.733(h) were modified from movable bridges to fixed bridges. As such, the bridges no longer open for the passage of vessels. Therefore, the regulations are no longer applicable and should be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes restrictions that have no further use or value.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridges have been fixed bridges for 2 years and this rule merely requires an administrative change to the Code of Federal Regulations, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

B. Basis and Purpose

On September 19, 2005, a Coast Guard Bridge Permit (1-05-5) was issued to the New Jersey Department of Transportation (NJDOT) to replace the existing bascule bridges, which carries Route 52 over Great Egg Harbor Bay (Ship Channel) at Somers Point NJ and over Great Egg Harbor Bay (Beach Thorofare NJICW) at Ocean City, NJ, with new fixed bridges. NJDOT completed construction for the new fixed bridges in May 2012. The elimination of these drawbridges necessitates the removal of the drawbridge operation regulations in 33 CFR 117.753 and 33 CFR 117.733(h) that contain the operating schedules pertaining to the former drawbridges.

C. Discussion of the Final Rule

The Coast Guard is changing the regulation in 33 CFR 117

without publishing an NPRM. The change removes the regulations governing movable bridges that were modified to fixed bridges. Specifically, this rule will remove the section of 33 CFR 117.753 that refers to the S52 Bridge at mile 0.5 and section of 33 CFR 117.733(h), that refers to the Route 52 Bridge at mile 80.4, from the Code of Federal Regulations since they govern bridges that are no longer able to be opened.

D. Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13653, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We reached this conclusion based on the fact that the regulations are no longer necessary since these bridges have been modified to fixed bridges.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: None. Due to the fact that these bridges have been fixed bridges for 2 years, this final rule will not have a significant economic impact on a substantial number of small entities.

3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that

it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the

human environment. This rule involves the removal of regulations for bridges that are now fixed bridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.733, remove paragraph (h) and redesignate paragraphs (i) through (m) as paragraphs (h) through § 117.753 [Removed]

2. Remove §117.753.

3.

Dated: March 19, 2014.

Steven H. Ratti,

Rear Admiral, United States Coast Guard,
Commander, Fifth Coast Guard District.

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